Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of	)	
	)	
Petition of the Connecticut Department	)	
of Public Utility Control to Retain	)	PR Docket No. 94-106
Regulatory Control of the Rates of	)	
Wholesale Cellular Service Providers in	)	
the State of Connecticut	)	

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OPPOSITION OF SPRINGWICH CELLULAR LIMITED PARTNERSHIP TO MOTION FOR STAY

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SUMMARY

Neither the equities nor the merits of the case justify the requested stay. With regard to the equities, Movants waited until nearly 60 days after the Commission's decision was issued, and nearly 30 days after the decision went into effect, before seeking a stay. During this period, deregulation in the Connecticut cellular market became effective. Therefore, contrary to the arguments raised in the Motion, to grant the stay now would alter the *status quo* and re-regulate the rates of the cellular carriers, to the detriment of the cellular carriers, who have already begun to develop and offer new unregulated services and who are faced with the imminent entry of unregulated ESMRS and PCS carriers. Simply put, Movants have failed to show that reimposing regulation would benefit consumers, or that there is any need for continued rate regulation in order to assure the entry of new CMRS competitors licensed by the Commission, the imminence of which has already resulted in benefits to Connecticut consumers. Indeed, subjecting Springwich to the costs and inflexibility caused by state tariffing requirements, while new competitors come into the market free of state regulation, would cause Springwich irreparable injury by hampering its ability to respond to the rapidly-changing conditions in the Connecticut market.

Nor are Movants correct in arguing that the temporary nature of the relief they seek on appeal justifies their attempt to obtain the same relief through a stay. Even if it were true that the appeal were to take as long as the extension of regulation that they seek (and there is no reason to believe it will), they are not entitled to a stay because they have not shown that the equities and the merits favor it.

The Motion also does not show that Movants will prevail on the merits of their appeal. There is no merit to the Motion's contention that the Commission gave inadequate notice of its decision-making criteria. Springwich understood that its level of investment was a relevant issue and submitted comments on it; Movants have had access to the investment data and, in fact, submitted it to the Commission when the DPUC forwarded the record of its earlier docket to the Commission. In addition, had such evidence existed to show that the Commission was incorrect in its conclusion, Movants could have rebutted the Springwich evidence either in their initial reply comments, or in a petition for reconsideration after the Commission's initial decision. The fact that they did not do so indicates that they have no case on this issue -- not that the Commission failed to give adequate notice. Nor can Movants claim inadequate notice with respect to the Commission's consideration of future market entry by PCS and other competitors. Indeed, the DPUC's earlier decision made findings on this issue, and it argued its position extensively before the Commission, showing that it fully understood its significance.

There is no merit either to Movants' contention that the Commission applied the wrong criteria to its assessment of competitive market conditions. Congress fully understood that an assessment of potential competitive entry was a key element in assessing competitive conditions in the cellular market. There was ample record support for the Commission's conclusion that potential entry by well-financed PCS competitors -- who have paid huge sums for the right to compete in the Connecticut market and can be expected to move rapidly to realize on their investment -- is already having a beneficial impact on Connecticut consumers. The Commission was correct in concluding that the Congressionally-mandated shift from

competition to regulation as a means of protecting consumers is already occurring, and should be allowed to proceed unhampered by the disparate regulation that the Movants want to impose.

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OPPOSITION OF SPRINGWICH CELLULAR LIMITED PARTNERSHIP TO MOTION FOR STAY

The Connecticut Department of Public Utility Control ("DPUC") and the Attorney General of Connecticut (together the "Movants") have moved for a stay[1/] pending appeal of the Commission's Report and Order, released May 19, 1995,[2/] denying the DPUC's petition requesting authority to continue regulating wholesale cellular service providers. Springwich Cellular Limited Partnership ("Springwich") hereby submits its comments in opposition to the motion for a stay.

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[1] *Motion for Stay of the Connecticut Department of Public Utility Control and the Attorney General of Connecticut*, filed July 14, 1995 ("Motion").

[2] *Report and Order*, PR Docket No. 94-106, released May 19, 1995 ("Report and Order").

I. THE EQUITIES FAVOR DENIAL OF A STAY

A. A Stay Would Alter the *Status Quo* to the Detriment of Springwich, Its Reseller Customers, and Their End User Subscribers

The Commission's decision was issued May 19, 1995. When the DPUC failed to file a petition for reconsideration by June 19, 1995, the Commission's action on the state's petition for exemption was completed and rate regulation in Connecticut ceased.

The Budget Act preempts state and local rate and entry regulation of all CMRS effective August 10, 1994 unless extended by the filing of a state petition for continued authority. Second Report and Order at ¶ 240. Specifically, Section 332(c)(3)(B) provides that the filing of a state petition requesting continuation of state rate regulation results in an automatic extension of state regulatory authority only "until the Commission completes all action (including any reconsideration) on such petition." By filing its Petition on August 9, 1994,[3] the DPUC therefore extended its rate regulation authority until the Commission's consideration of the Petition was complete. The Commission's action on the DPUC Petition was completed on June 19, 1995, when no petitions for reconsideration of the Commission's May 19, 1995 Report and Order were filed.[4] Under the Budget Act, therefore, the

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[3] *Petition of the Connecticut Department of Public Utility Control*, PR Docket No. 94-106 (filed Aug. 9, 1994) ("DPUC Petition").

[4] The termination of state rate regulation as of June 19, 1995 also raises the question of whether the Commission even has the ability to grant a motion for stay filed after that date, since a motion for stay is not one of the procedures identified in the Budget Act for obtaining authority to re-regulate CMRS rates once rate regualtion has ceased. *See* Communications Act, Section 332.

automatic extension of state regulatory authority, which resulted from the pendency of the DPUC Petition, automatically expired.[5/]

Shortly thereafter, Springwich notified its reseller customers that it will offer a new service in Connecticut known as Directory Assistance Call Completion ("DACC"). Under this service, a subscriber who obtains a number from Directory Assistance throughout Connecticut and western Massachusetts will be given the option after the number is announced to complete the call to destinations throughout those areas automatically by pressing "1" or instructing the operator to complete the call. This is a very important service for cellular customers, who frequently make calls from locations at which they do not have a directory at hand and, especially if calling while driving, may not be able to note the number given them by Directory Assistance and redial it themselves without a hazard to safety. This service has not previously been offered by any cellular carrier in Connecticut.

In reliance on expiration of the DPUC's regulatory jurisdiction and the fact that its state tariff became ineffective as a matter of law on June 19, 1995, Springwich Cellular has offered the DACC service to resellers and, through the resellers, indirectly to end users, without filing a new tariff. If state rate regulation was still in effect, introduction of the DACC service as currently configured would have required the filing of a tariff and regulatory approval -- a process which, in Springwich's experience, would have caused substantial delay, even if not contested.

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[5] Springwich notes that, had such a petition for reconsideration been filed (as is the case in two of the other state petition proceedings), the Budget Act's automatic continuation of regulation would have remained in effect only until the Commission ruled on the reconsideration request -- a ruling which, under the Budget Act, must occur no later than 12 months of the filing of the initial state petition. Second Report and Order at ¶¶ 240-41.

By failing to file a petition for reconsideration, allowing the DPUC's regulatory jurisdiction to expire, and then waiting to file an application for a stay until the time for judicial review was about to expire, Movants have allowed the *status quo* to change. Granting the stay at this point would alter the *status quo* again, would be extremely detrimental to Springwich and those resellers who have already taken steps to notify and promote DACC services, and would also create consumer confusion by perhaps requiring the revocation of the new service for some period of time that deregulation has allowed Springwich to institute. Indeed, the Motion concedes that "[t]o shift back and forth from a regulated and unregulated environment while the Order's legality is litigated is plainly not in the public interest and will result in irreparable harm" as well as "[c]onsumer confusion." Motion at 10. Springwich agrees. For that reason alone, the Motion should be denied.

B. There is No Basis to Conclude That Continuation of the Deregulated *Status Quo* Will Cause Irreparable Harm

Movants argue that, without continued regulation, consumers will be "left unprotected." Motion at 11. It is difficult to understand this argument. First of all, even if the DPUC were permitted to re-regulate cellular wholesale rates, consumer rates would remain unregulated. Second, this argument, which is apparently based on a concern that wholesale rates will rise without re-regulation, is inconsistent with the Movants' argument that, without re-regulation, the cellular carriers may impede the entry of new entrants. Motion at 9-10. As discussed below, the only thing that the existing carriers can do to compete with new facilities-based competitors is to offer superior service at competitive prices -- hardly accomplished by *raising* prices.

Moreover, the premise of the Budget Act is that consumer protection is better achieved through competition rather than regulation. The record supports the Commission's finding that existing competition and the imminent entry of PCS competitors is already performing the function anticipated by Congress by lowering consumer prices and driving carriers to develop new and improved services. Report and Order at ¶ 23. Ample record support also led the Commission to disagree with the DPUC's position that the existing carriers are guilty of anti-competitive or discriminatory practices requiring continued DPUC regulation for "protection." Report and Order at ¶¶ 71-74.

Nor is there any basis for Movants' argument that failure to grant a stay will cause irreparable harm because "[w]ithout continued regulation, the existing carriers will have the potential to use their market power to the disadvantage of new entrants." Motion at 10. There is literally nothing in the record to support this assertion. Even if one were to accept all the allegations made regarding anti-competitive and discriminatory practices (which the Commission correctly declined to accept), at most they would show practices at the wholesale cellular level -- rather than with respect to competitors offering new services with their own facilities (such as PCS).[6/] Movants have not even offered a speculative explanation of how the existing carriers can possibly block facilities-based competition from the well-financed nationally-recognized companies who have recently spent hundreds of millions for the license to compete in Connecticut. In fact, all the existing carriers can do to defend themselves is to

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[6] The DPUC's findings regarding anti-competitive and discriminatory practices make it clear that the allegations pertained to wholesale cellular practices. *DPUC Investigation into the Connecticut Cellular Service Market and the Status of Competition*, Docket No. 94-03-27, Decision (issued Aug. 8, 1994) ("DPUC Decision") at 23-27.

offer superior service at competitive prices; that is what Springwich has already done and intends to continue doing.[7/] Its effort to do so should not be hampered by a continuation of state regulatory restrictions.

C. Re-Regulation Would Cause Springwich Irreparable Injury

Continuation of state regulation will cause Springwich irreparable injury, because it would continue to be subject to state tariff requirements while its new competitors are not. The Commission has recognized that tariff requirements take away the ability to make rapid, efficient responses to changes in demand and costs, remove incentives for carriers to introduce new offerings, and impose costs on carriers that attempt to make new offerings.[8/] The Congressional goal of regulatory parity would be ill-served if Springwich and its customers were subjected to these restrictions and costs, while its new competitors are spared; and Springwich itself would be subject to an inequitable disparity which may irreparably damage its competitive position during the crucial period when well-financed and technically sophisticated new competitors begin their entry into the Connecticut market.

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[7] As Springwich pointed out in its comments, "rather than wait until after they arrive to respond to the new competitors, the wholesale cellular carriers have already begun to compete by investing in network improvements and lowering wholesale rates to increase subscribership. In addition, both wholesale carriers have accelerated deployment of additional cell sites and conversion to digital technology to compete head-to-head with PCS and ESMRS while at the same time decreasing their wholesale prices." *Comments of Springwich Cellular Limited Partnership*, PR Docket No. 94-106, at 5 (filed Sept. 19, 1994) ("Springwich Comments").

[8] *Second Report and Order*, In the Matter of Implementation of Sections 3(n) and 332 of the Communications Act Regulatory Treatment of Mobile Services, GN Docket No. 93-252 (released March 7, 1994) ("Second Report and Order") at ¶ 177.

In addition, as noted above, Springwich, its reseller customers, and their end users would be harmed by grant of a stay insofar as it would compel re-regulation and possible interruption of Springwich's new DACC service. DACC, which is not available from any other cellular carrier, provides a valuable service to users, both as a matter of convenience and, in many instances, safety.

D. The Fact That Movants Seek Only a Temporary Continuation of Regulation Is Not Ground For a Stay

Finally, Movants argue that the only relief they seek on appeal is a temporary continuation of regulation until October, 1997 at the latest, which will be substantially denied if the expiration of regulation continues during the course of the appeal. They argue that the stay should be granted to prevent the appeal from becoming substantially moot. The Movants are therefore seeking to achieve through a stay what the DPUC failed to justify in its filing -- a continuation of rate regulation on a single segment of the CMRS market until October 1997.

The factual premise for this argument is weak; the Second Circuit is typically prompt in its processing and decision of appeals, and there is no reason to believe that the appeal will extend to anywhere near October, 1997. Moreover, while the closing page of the DPUC Petition confines the present request to no later than October, 1997, the body of the Petition suggests that the DPUC wants to continue state regulation until the year 2003.[9/]

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[9] The DPUC Petition states, with apparent approval, that a witness for the resellers gave the opinion that "the highly concentrated nature of the Connecticut CMRS marketplace will not significantly change before the year 2003." DPUC Petition at 4. The Attorney General's comments to the Commission also stated that the Connecticut wholesale cellular market will "likely remain" non-competitive "until after the turn of the century." *Comments of the Attorney General of the State of Connecticut*, PR Docket No. 94-106, at 3 (filed Sept. 19, 1994) ("Comments of Attorney General").

In any event, Movants are not entitled to a stay even if their only object on the appeal is to continue state regulation for as long as the appeal will take. If that were indeed true, it would mean that Movants, by obtaining the stay, would obtain all the relief they seek on appeal. This they cannot do without showing that they have a strong case on the merits and the equities favor a stay -- a showing they have not made.

II. MOVANTS HAVE NOT SHOWN A PROBABILITY OF SUCCESS ON THEIR APPEAL

On the merits, the Motion makes two arguments. First, it argues that Movants did not have adequate prior notice of the types of evidence that the Commission would regard as significant in deciding the case. Second, it argues that the Commission applied the wrong standards and misinterpreted the evidence with respect to two issues: the competitive impact of potential entry by PCS providers into the Connecticut market, and alleged anti-competitive and discriminatory practices by existing carriers. Neither argument has merit.

A. Movants Had Adequate Prior Notice of the Commission's Criteria of Decision

1. Reinvestment in Cellular Network Facilities

Movants argue that the Commission's Second Report and Order did not give them adequate prior notice that the Commission would give significance to the existing carriers' reinvestment of profits in cellular facilities. Motion at 4-5. The contention lacks merit.

The Second Report and Order stated that the state could submit "whatever evidence the state believes is persuasive regarding market conditions in the state and the lack of protection for CMRS subscribers." The DPUC has, both during the proceedings on which it based its Petition to the Commission for continued regulatory authority and over the course of its prior

regulation of the cellular carriers, had available information on the providers' profits and investment. If Movants had information that the cellular providers were funneling their profits out of the business, without providing adequate reinvestment to maintain their growing customer base, they surely would have submitted that evidence in their initial filings or at a minimum would have done so in a petition for reconsideration after the Commission's Report and Order indicated that the Commission was relying on the record evidence that the carriers were in fact re-investing in network facilities.

In fact, Springwich understood that the level of investment in cellular facilities by existing carriers was an important issue, and in its comments submitted to the Commission showed that the cellular providers have made huge investments, both nationwide and in Connecticut.[10/] Movants have not even attempted to rebut this evidence, which the Commission accepted.[11/] Movants' contention that they did not have adequate notice and an opportunity to submit contrary evidence is a nothing more than a smokescreen designed to cover the substantive inadequacy of their case.

In addition, the Second Report and Order stated that the Commission would consider the providers' "annual revenues and rates of return," as well as the "trends in each provider's customer base" and "customer satisfaction or dissatisfaction with services offered by CMRS

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[10] Springwich's comments pointed out that nationwide capital investment of cellular carriers had reached almost $14 billion by the end of 1993. Springwich Comments at 14. Springwich also pointed out that the number of cell sites in its network in Connecticut increased "from an initial 17 for its entire service area in 1985 to over 90 today." *Id.* Springwich is also investing heavily in digital technology and in additional micro-cells. *Id. at* 14-15.

[11] The Commission found that the existing carriers "continue to invest heavily in building out their networks." Report and Order at ¶ 75.

providers." Movants are fully aware that the amount of investment is a key component in deciding whether a given level of annual revenues represents a reasonable rate of return. Indeed, the DPUC's decision discusses the existing carriers' rate of return and in that connection specifically addresses the issue of capital asset pricing. DPUC Decision at 10. Movants are also aware that the carriers cannot serve their rapidly growing customer base -- and maintain customer satisfaction -- without also increasing their investment in cellular facilities. *See* Report and Order at ¶ 25. Indeed, the DPUC's decision discusses the capital investments that new competitors will have to make to service the customers they hope to attract. DPUC Decision at 20, 21-22. In short, the carriers' level of investment was an important factor in assessing the considerations raised in the Second Report and Order. Movants' failure to adduce evidence of inadequate investment results from the fact that such evidence does not exist -- not from any inadequacy in the Second Report and Order.

2. Market Conditions

Nor is there any merit to Movants' contention that they did not have adequate prior notice of the Commission's stress on the importance of future market conditions, and specifically the "immediate and near-term impact" of entry by PCS providers. The Second Report and Order specifically stated that the Commission would consider "[o]pportunities for new entrants that could offer competing services, and an analysis of existing barriers to such entry." Movants must have known that potential entry by PCS providers was a crucial element in the Second Report's reference to "new entrants." Indeed, as the Motion for Stay points out (at p. 6), the issue of PCS entry was a "central focus" of the DPUC's pre-petition

hearings as well as its findings -- thereby demonstrating its understanding of the central significance of this issue. DPUC Decision at 21-22, 31, Findings 14-19.

B. The Commission Applied the Correct Standard Regarding Potential PCS Entry

Movants contend that the Commission's focus on future entry by new competitors was contrary to the standards of the Budget Act. However, the legislative history of the Budget Act shows that Congress wanted the Commission to consider the entry of new competitors that deregulation would encourage as a significant element in reviewing state petitions to extend regulation. Thus the House Committee directed the Commission to review any state petitions in light of "the Committee's desire to give the policies embodie[d] in section 332(c) an *adequate opportunity to yield the benefits of increased competition and subscriber choice anticipated by the Committee*." H.R. Rep. No. 103-111, 103d Cong. 1st Sess. at 261-2 (emphasis added). The Committee's reference to "an adequate opportunity" makes clear the Committee's understanding that the policy of deregulation was a forward-looking effort which looked to both current and future competition to yield the "anticipated" benefits.

In addition, as the Commission pointed out, Congress is presumed to know the existing law pertinent to the legislation it enacts,[12] and anti-trust law requires any assessment of competitive conditions to include potential entry by new competitors in the near future.[13] Moreover, the Congressional Committees which developed Section 332(c) were undoubtedly aware of the 1992 GAO Report, which stated that the Commission "is relying on the

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[12] *Goodyear Atomic Corp. v. Miller*, 486 U.S. 174, 184-5 (1988).

[13] *See* Authorities cited in Report and Order at ¶ 22 ns. 59 & 60.

introduction of advanced personal communications services to bring competition to the cellular telephone marketplace." *See* Report and Order at ¶ 13 n. 40. If Congress had wanted the Commission to change its approach in its consideration of state exemption petitions, it could have so specified in Section 332(c).

It is, in short, unpersuasive to argue that the Congress wanted the Commission to ignore the imminence of additional competition in assessing the competitiveness of the cellular market -- particularly in light of the evidence that the prospect of PCS entry is *already* resulting in lower consumer prices. *See* Report and Order at ¶ 23.

C. The Record Supports the Commission's Findings

Finally, Movants criticize the Commission's findings on two issues: the imminence of entry by PCS competitors, and alleged anti-competitive and discriminatory practices by existing carriers. Movants' criticisms have no foundation.

1. The Fact That the Commission Disagreed With The DPUC's Conclusion as to the Impact of PCS Competition Does Not Warrant a Stay

Movants wrongly accuse the Commission of ignoring the fact that the DPUC made findings regarding potential PCS competition. The basis for this accusation is the Commission's statement that "we will look with disfavor on any petition that fails to consider the immediate and near-term impact of PCS." Report and Order at ¶ 21. This statement occurs in the course of the Commission's general discussion of criteria for state petitions. In its specific discussion of the Connecticut petition, however, the Commission describes and expressly cites the DPUC's findings with regard to potential competitive entry by PCS and

other providers. Report and Order at ¶ 42. The Commission did not ignore the DPUC findings; it simply disagreed with them.

The record fully supports the Commission's finding that, contrary Movants' view, PCS entry into the market is imminent and is presently having a beneficial impact on consumers. As the Commission pointed out, the winning bidders for PCS licenses encompassing Connecticut have paid huge sums, and can be expected to move rapidly to realize on their investments. Report and Order at ¶ 22. While the Movants insist that recent rate decreases by existing carriers result from "light-handed" DPUC regulatory pressure, the Commission reasonably (and correctly) interpreted the evidence to show that the competition among the cellular carriers and the imminent prospect of entry by PCS competitors are the principal cause of these rate decreases. Report and Order at ¶ 23. The record provided ample support for the conclusion that rate reductions in the wholesale market in Connecticut, as well as investment in new facilities and technology, have been substantial and have accelerated in recent years as existing competition has intensified and the entry of alternative service providers has become imminent. *See* Springwich Comments at 14-16.

Indeed, the DPUC's own findings were that "eventual entry by alternative service providers will not occur until the 1995 to 1996 time frame." DPUC Decision at 22 (emphasis added); *see also* DPUC Decision at Finding 19 ("their entry will not be until [the] 1996 time frame"). That may have seemed the remote future at the time of the DPUC decision in August, 1994, but the "1995 to 1996 time frame" is now upon us, and thus the DPUC's finding that PCS entry would occur in that "time frame" now *supports* the Commission's view

that PCS entry is sufficiently close to have a present competitive impact and on this ground alone the Commission should deny the stay.

2. The Commission Properly Weighed the Evidence of Alleged Anti-Competitive Conduct

Movants charge that the Commission "erroneously discounted" evidence of "anti-competitive and discriminatory practices" by existing carriers. Specifically, Movants criticize the Commission for noting that the DPUC, after hearing extensive evidence regarding these alleged practices, did not take any remedial actions and did not find the practices to be illegal. Motion at 6-7.

Movants' criticisms have no foundation. With respect to three of the four alleged anti-competitive or discriminatory practices (pricing practices, sharing of confidential information, and wholesale-retail affiliation), the Commission found that no abuse had occurred.[14/] With respect to the sharing of confidential marketing information, the Commission also accepted Springwich's assurance that where management responsibilities for its wholesale and

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[14] With respect to the alleged pricing practices, the Commission found: "Moreover, there is no suggestion in this record that facility-based cellular carriers are charging different rates for the same service, based on a customer's identity. Nor has Connecticut shown that the volume discounts lack an adequate economic justification." Report and Order at ¶ 71.

With respect to the alleged sharing of confidential marketing information, the Commission found that the DPUC had not rebutted Springwich's assertions that "such information is not required of independent resellers, and when it is volunteered it is protected." Report and Order at ¶ 72.

With respect to the relationship between wholesale carriers and their retail affiliates, the Commission noted that "carriers could operate on a fully integrated basis, with all the internal coordination such operations imply." Report and Order at ¶ 73.

retail operations overlap, "the companies have taken steps to ensure that wholesale and retail information is not shared." Report and Order at ¶ 72.

The Commission also properly found that the two instances in which a wholesale carrier appeared to have favored its retail affiliate did "not establish a pattern of anti-competitive activity and does not support a request to continue rate regulation." Report and Order at ¶ 73. With respect to the fourth alleged practice (equal access and billing), the issue is the interLATA long-distance market, which is exclusively an interstate issue subject to federal regulation and (as the Commission found) presently the subject of a federal proceeding. *See* Report and Order at ¶ 74 n.176.

3. The Commission Had Ample Evidence on Which to Conclude That Competition, and Not Regulation, Has Provided the Impetus for Rate Reductions In Connecticut

Finally, Movants argue that the lack of any state remedial action against the existing carriers' alleged anti-competitive and discriminatory practices, as well as the lack of any pattern of such practices and the recent rate decreases the existing carriers have initiated, all result from the carriers' response to DPUC's "light-handed" approach to regulation rather than competitive conditions in the marketplace protecting consumers in lieu of regulation. Motion at 7-8. The implication is that, without the DPUC's regulatory authority, competition will fail to protect consumers, abuses will proliferate and price decreases will be reversed.

The Commission had ample basis in the record for a different view. Potential competitors have paid huge sums for the right to offer PCS services in Connecticut, and are authorized by law to enter the market by constructing competitive facilities. Existing carriers will therefore be compelled to offer first-rate service to their customers at competitive prices

in order to compete. Indeed, the Commission cited evidence that the imminence of PCS competition is already responsible for price decreases in the cellular market. Report and Order at ¶ 23. For example, Springwich's comments explained that its 35 percent decrease in monthly wholesale rates in August 1994 was "in response to a rate reduction by BAMM and the changing market conditions." Springwich Comments at 16. The Commission had ample reason to conclude that this explanation was more plausible than Movants' contention that rate reductions of this significance were only regulatory gamesmanship on Springwich's part.

In short, the Commission's decision was within its authority under the Budget Act, and had ample support in the record. There is no basis for judicial reversal, and no basis for a stay.

CONCLUSION

For all of the foregoing reasons, the Motion should be denied.

Respectfully submitted,

SPRINGWICH CELLULAR
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